

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DAVID LIPSON, a Nevada resident,
and BONE RATTLER, LLC, a
Wyoming limited liability company,

Plaintiffs and
Counter-Defendants,

vs.

GROVER + COMPANY, LLC d/b/a
MONTANA CREATIVE
ARCHITECTURE AND DESIGN, a
Montana limited liability company, and
SCOTT ELDEN, individually,

Defendants, Counterclaimants,
and Third-Party Plaintiffs,

vs.

NADINE LIPSON, QZM, INC., a
Nevada corporation, and PAWS UP
RANCH, LLC d/b/a RESORT AT
PAWS UP,

Third-Party Defendants.

CV 19–36–M–DWM

ORDER

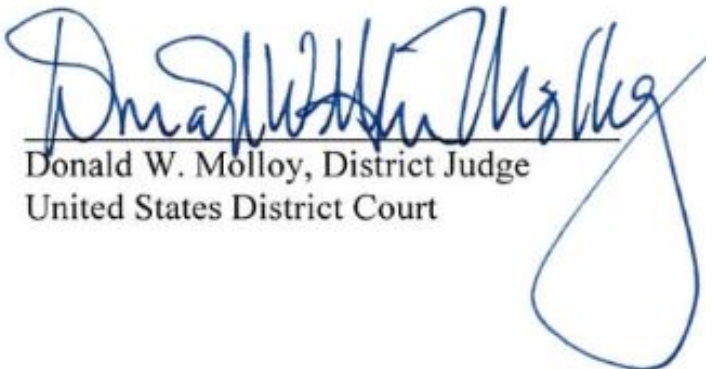
The parties are familiar with the facts underlying the dispute in this case, so they need not be repeated here. On April 11, 2019, Plaintiffs/Counter-Defendants David Lipson and Bone Rattler, LLC (collectively “Lipson”) moved to dismiss the abuse of process claim (Count Five) of the First Amended Counterclaim and

Third-Party Complaint. (Doc. 11.) Defendants/Counterclaimants Grover + Company, LLC, doing business as Montana Creative Architecture and Design, and Scott Elden (collectively “Montana Creative”) failed to respond by the May 2, 2019 deadline. *See* L.R. 7.1(d)(1)(B)(i).

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a claim “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The elements of an abuse of process claim are “(1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Brault v. Smith*, 679 P.2d 236, 240 (Mont. 1984). The First Amended Counterclaim and Third-Party Complaint (Doc. 7) does not allege facts to support either of these elements. Accordingly,

IT IS ORDERED that Lipson’s motion to dismiss (Doc. 11) is GRANTED. Count 5 of the First Amended Counterclaim and Third-Party Complaint (Doc. 7) is DISMISSED.

DATED this 17th day of May, 2019.


Donald W. Molloy, District Judge
United States District Court